

ADA Guide for State and Local Government Agencies

Effective Communication for Deaf, Hard of Hearing or Deaf-Blind Individuals

WHAT IS THE ADA?

The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against deaf, hard of hearing, and deaf-blind people.

It applies to:

- Many private and public employers (Title I)
- **State and local government agencies (Title II)**
- Places of public accommodation (Title III)
- Transportation facilities (Titles II and III)
- Telecommunications companies (Title IV)
- The United States Congress (Title V)

Agencies responsible for the enforcement of the ADA:

Agency	Enforcement
Equal Employment Opportunity Commission (EEOC) www.eeoc.gov	<ul style="list-style-type: none"> • Equal Access to Employment • Reasonable Accommodation
U.S. Department of Justice (DOJ) www.ada.gov	<ul style="list-style-type: none"> • Equal Access to State & Local Government Programs • Equal Access to private business • Effective Communication
U.S. Department of Education (DOE) www.ed.gov	<ul style="list-style-type: none"> • Facility and program access to K-12 schools • Higher Education program access • Access to vocational schools
Federal Communications Commission (FCC) www.fcc.gov	<ul style="list-style-type: none"> • Access to relay services

REQUIREMENTS

The ADA establishes different obligations for state and local governments (Title II) and places of public accommodations (Title III). Generally, however, both have requirements for **effective communication** (28 CFR §35.160 (a)(1)). They must provide “**auxiliary aids and services**” for individuals who are deaf, hard of hearing, or deaf-blind to ensure

effective communication (28 CFR §35.160 (b)(1)).

Here are a few examples:

- Qualified Sign Language Interpreters
- Qualified Video Remote Interpreters (VRI)
- Communication Access Real-time Translation (CART)
- Captioned videos
- Visual fire alarms
- Written notes
- Notetakers
- Written materials
- Assistive listening devices including loop and FM systems
- Hearing aid compatible phones
- Amplified Phones
- Captioned Telephones
- Videophones
- Screen reader software
- Magnification software
- Large print materials
- Braille
- Other related actions or services

Each person will have a different communication preference based on their experiences, age of onset, and residual hearing acuity. The type of auxiliary aid or service needed varies depending on the situation. State governments should assess the:

- **Nature** of the communication being exchanged
- **Length** of the conversation
- **Complexity** of the information exchanged

Entities should honor the communication preference of the individual and provide primary consideration to the request of the person requesting the auxiliary aid or service (28 CFR §35.160 (b)(2)).

ENTITIES THAT MUST COMPLY

All activities and programs of state and local governments must comply with the ADA including state and local courts and legislatures, police and fire departments, school systems, social service agencies, libraries, motor vehicle departments, prisons, and other entities (28 CFR §35.102(a)). In addition, private businesses that contract with local government

agencies must also comply with the ADA and cannot deny deaf, hard of hearing, or deaf-blind individuals benefits, services, and aid (DOJ 28 C.F.R. § 35.130(b)).

ASSISTIVE LISTENING SYSTEMS

All assembly areas in which audible communication is integral to the use of the space must have an assistive listening system provided. (ADA 2010 Standards, Chapter 2, Section 219).

An assembly area is “a building or facility, or portion thereof, used for the purpose of entertainment, educational or civic gatherings, or similar purposes.” This means that if a space provides audio amplification (such as a microphone or sound system) they are required to have an **FM System**, an **Infrared System**, or a **Hearing Induction Loop**.

Assembly areas include:

- Classrooms
- Lecture halls
- Courtrooms
- Public meeting rooms
- Public hearing rooms
- Legislative chambers
- Movie & live theaters
- Auditoriums
- Amphitheatres, arenas or stadiums
- Convention centers

These systems must be compatible with hearing aids. Public entities are required to provide receivers or neck loops for individuals that may need sound amplification in case the system is not compatible with the individuals hearing aid, or for those that do not have hearing aids.

Each assembly area is required to put up proper signage indicating the availability of an assistive listening system.

TELECOMMUNICATIONS SYSTEMS

State and local governments should take steps to ensure their telephone communications are available to persons who are deaf, hard of hearing or deaf-blind. Here are a few ways a public entity can provide telephone access:

- Train staff (especially those that interface with the public via telephone) on accepting video or telephone relay calls
- If there are payphones, courtesy telephones, or the use of a courtesy telephone is offered within a facility, be sure the phones have audio amplification and there is another telephone device (such as TTY, captioned phone, or video phone) available
- Ensure that there is effective and direct TTY access (that does not require relay services) to the emergency 911 systems, emergency hotlines, and emergency information centers
- Take steps to implement next generation 911 (such as text to 911) services within your area

QUALIFIED INTERPRETERS

According to the ADA, a “Qualified Interpreter” means, “an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary” (28 C.F.R. §35.104).

The ADA does not require that an interpreter hold any type of professional certification. Within the State of Colorado’s **Consumer and Protection Act** (6-1-707(1)(e)), persons who are deaf, hard of hearing and deaf-blind, as well as the entity responsible for hiring has a right to know and request proof of certification from the person hired to facilitate interpreting services. Under the act, it is considered a “deceptive business practice” to promote oneself as an “interpreter” without first obtaining certification from the Registry of Interpreters for the Deaf (RID) or a successor organization.

In 2006 the State of Colorado passed the **Legal Interpreting/Auxiliary Services Act** (Senate Bill 06-061) which established the program to centralize and administer the provision of qualified sign language and oral legal interpreters and CART providers as well as assistive listening systems for deaf, hard of hearing, or deaf-blind citizens involved in Colorado State Court proceedings. This legislation is exclusive to the City and County of Denver Courts as well as all Municipal Courts.

A person who is deaf, hard of hearing, or deaf-blind may request a qualified sign language interpreter for communication exchanges that are lengthy or complex. For example, a person who needs a sign language interpreter to effectively communicate might request this service for meetings, interviews, medical appointments, interactions with law enforcement, a public school assembly, public trainings, or court proceedings. Public entities are responsible for responding to requests for interpreters in a timely manner.

Due to the requirement of impartiality, state or local government entities cannot require a person who is deaf, hard of hearing, or deaf-blind to bring his or her own interpreter. The state or local government is responsible for paying for the interpreting service and cannot charge the deaf, hard of hearing or deaf-blind person for providing the auxiliary service or aid.

VIDEO REMOTE INTERPRETING

The ADA states that interpreters can be provided either in person or via a **Video Remote Interpreting (VRI)** service. A VRI interpreter facilitates communication from a remote location using videoconferencing technology over a wired or wireless high speed internet connection. Many public entities have chosen to use VRI as an alternative to providing interpreters onsite.

In some situations, VRI can be a good alternative to an in-person interpreter. Those situations include:

- If it is the preference of the deaf, hard of hearing or deaf-blind person
- In rural areas where an interpreter is not available
- In employment situations where there is not a staff interpreter available
- In emergency situations (where appropriate) to gather information before an interpreter arrives onsite

Deaf, hard of hearing, or deaf-blind people may be resistant to using VRI technology because:

- VRI is not appropriate in all settings
- VRI technology can be unreliable
- The absence of an in-person interpreter can make the communication less personable

Deaf, hard of hearing, or deaf-blind people may be unable to use VRI technology because:

- They are experiencing a medical emergency and unable to position themselves to comfortably use a tablet, laptop, or screen
- They have low-vision
- They need the services of a Certified Deaf Interpreter (CDI) due to minimal language skills

In order for VRI to be effective:

- The deaf, hard of hearing, or deaf-blind person should agree to use the service
 - If they do not want to use the service, an alternative accommodation (such as providing a live interpreter) should be offered unless there is no other service available
- The interpreter providing the service should be qualified
 - They should be asked to provide proof of their RID Certification to the state or local government entity prior to the appointment
- The equipment should be in a location that is known to all staff members
- The software required should be updated regularly
- Staff should be trained on the equipment regularly
- The equipment should be tested regularly

Entities that rely solely on VRI services are at risk of not providing effective communication. If the equipment or internet connection fails, the staff doesn't know where to find the equipment, or the situation is not appropriate for the use of VRI, and there is no other option of providing an in-person interpreter, the entity has not adequately provided program access. This means the entity is not complying with the ADA. During emergencies, some entities (such as police departments and medical centers)

call an in-person interpreter or agency first. While the interpreter is on route, the entity will use the VRI service until the interpreter arrives.

POLICIES

To effectively implement the ADA, state and local governments are encouraged to enact internal policies and procedures that address the specific communication needs of the entity and the patrons it serves. Drafting policies and subsequently providing training on the internal protocols for arranging auxiliary aids and services keeps staff members informed with how to comply with the ADA. A comprehensive **Effective Communication Policy** includes the following:

- Definition of who is entitled to auxiliary aids and services (Persons who are deaf, hard of hearing, deaf-blind and companions)
- Examples of services and auxiliary aids the entity has available
- How to respond to a request for auxiliary aids (such as interpreters)
- How long it should take to respond to requests
- Where devices (like assistive listening systems, TTYs or VRI equipment) are stored
- Policy about providing Sign Language Interpreters or CART providers
- Names of subcontractors that provide auxiliary services (such as interpreters)
- Hours of when subcontractors are available to provide services
- Procedures for obtaining a qualified interpreter last minute or during an emergency
- When it is appropriate to exchange written notes and when an interpreter should be called
- Who is considered a “qualified interpreter”
- Language about friends, family, children and impartial parties being unqualified to interpret
- Appropriate and inappropriate times and settings to use Video Remote Interpreting (if applicable)

ADA COORDINATOR

Title II requires local government entities with 50 or more employees to have a **ADA Coordinator** who makes sure the ADA is effectively implemented. If a consumer files a complaint, the ADA Coordinator must organize an investigation (28 C.F.R. § 35.107(b)).

Please contact CCDHH for more information, referrals, training, and other resources regarding government, businesses, and individuals.

(Updated 12/16)

